

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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### LEGEND:

Taxpayer =  
Employee A =  
Employee B =  
Year 1 =

Date 1 =  
Date 2 =

Dear :

This letter is in response to a letter dated March 6, 2009, submitted by your authorized representative, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, Taxpayer requested a ruling that Employee A and Employee B are not "covered employees" for Year 1 and that no compensation paid to Employee A and Employee B with respect to Year 1 is subject to the deduction limitation of section 162(m). The facts, as represented, are as follows.

Taxpayer is a publicly held corporation. Employee A and Employee B served as principal financial officers of Taxpayer during Year 1. Employee A served as the principal financial officer beginning Date 1 and ending Date 2 of Year 1. Employee B served as the principal financial officer for the remainder of the Year 1. Employee A is one of Taxpayer's top three most highly compensated executive officers for Year 1 other than the principal executive officer and the principal financial officer who were serving as executive officers at the end of Year 1. Pursuant to the executive compensation disclosure rules under the Securities Exchange Act of 1934 (Exchange Act), Taxpayer disclosed the compensation of Employee A and Employee B because Employee A and Employee B each served as the Taxpayer's principal financial officer during Year 1.

Section 162(a)(1) of the Code allows a deduction for all of the ordinary and necessary

expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that for any publicly held corporation no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act.

Section 162(m)(3) of the Code defines covered employee as any employee of the taxpayer if (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162-27(c)(2)(ii) of the Income Tax Regulations generally provides that whether an individual is a covered employee is determined pursuant to the executive compensation disclosure rules under the Exchange Act. The Securities and Exchange Commission's rules relating to executive compensation disclosure under the Exchange Act are contained in Item 402 of Regulation S-K, 17 CFR 229.402. These rules require disclosure of compensation awarded to, earned by, or paid to certain executive officers.

On September 8, 2006, a final rule amending the Securities and Exchange Commission's executive compensation disclosure rules was published in the Federal Register (71 FR 53158). Among other things, the amended disclosure rules altered the composition of the group of executives that are covered by the disclosure rules. Like the pre-amendment disclosure rules, the amended disclosure rules refer to these executives as "named executive officers." Under the amended disclosure rules, named executive officers consist of, in relevant part, (i) all individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; (ii) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; and (iii) the registrant's three most highly compensated executive officers other than the principal executive officer and the principal financial officer who were serving as executive officers at the end of the last completed fiscal year. Under the old disclosure rules, named executive officers consisted of, in relevant part, (i) all individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year, regardless of compensation level; and (ii) the registrant's four most highly compensated executive

officers other than the chief executive officer who were serving as executive officers at the end of the last completed fiscal year. Companies must comply with the amended disclosure rules for fiscal years ending on or after December 15, 2006.

Notice 2007-49, 2007-1 C.B. 1429, provides that the IRS will interpret the term "covered employee" for purposes of section 162 (m) to mean any employee of the taxpayer if, as of the close of the taxable year, such employee is the principal executive officer (within the meaning of the amended disclosure rules) of the taxpayer or an individual acting in such a capacity, or if the total compensation of such employee for that taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the 3 highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer). The Notice also provides that the term covered employee for purposes of section 162 (m) does not include those individuals for whom disclosure is required under the Exchange Act on account of the individual being the taxpayer's principal financial officer (within the meaning of the amended disclosure rules) or an individual acting in such a capacity.

Therefore, based solely on the facts presented, we rule as follows:

For purposes of section 162(m) of the Code, Employee A and Employee B will not be considered "covered employees" during Year 1.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Thomas D. Scholz  
Assistant Branch Chief  
Executive Compensation Branch  
Office of Division Counsel / Associate Chief  
Counsel / Tax Exempt & Government Entities